Landscape Management around Carbon Inlet and Peace Reach on Williston Lake, Near Hudson's Hope, BC

Complaint Investigation 980152

FPB/IRC/27

April 2000

103-06338/

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The Investigation

In June of 1998, the Board received a complaint from a resident of Hudson's Hope, a small community located above the Peace River in the foothills of the Rocky Mountains near Fort St. John.

The complainant was concerned about the scenic areas that had been identified and the visual quality objectives (VQOs) that had been established for the hillsides along the Peace Reach and Carbon Inlet areas of Williston Lake. Williston Lake is a large lake created by the WAC Bennett Dam approximately 15 kilometres west of Hudson's Hope. Carbon Inlet is on the south side of the lake, 35 kilometres west of the dam (see map). The complainant is a member of the Municipal Council of Hudson's Hope and a member of a yacht club on Williston Lake. He also has a trapping cabin on Carbon Inlet.

Carbon Inlet and Peace Reach are within Tree Farm Licence 48 (TFL 48) held by Canadian Forest Products' Ltd (the licensee).

The scenic areas and visual quality objectives of concern to the complainant were set by the district manager of the Dawson Creek Forest District in June 1997. They were based on an inventory done by the licensee as part of a management plan for TFL 48. The complainant felt that this was not appropriate because the licensee's interest was in the timber resource and that other resource users had not had input into the visual quality objectives. The complainant asked that the visual quality objectives be made more restrictive on logging operations to give increased protection for recreation values.

In the investigation of the complaint, the Board considered the following issues:

1. Did the district manager comply with the Code when he identified scenic areas and established VQOs for the hillsides of Peace Reach and Carbon Inlet on Williston Lake?

2. What information did the district manager consider in identifying scenic areas and establishing VQOs? Did he adequately assess the available information?

3. Was the district manager's decision on the VQOs reasonable?

4. Was the process used to gain public input into the identification of scenic areas and establishment of VQOs fair?

After examining these questions, the Board also considered information that became available after the district manager made the decision at issue in this complaint.

Terms Used in this Report

The district manager used a visual landscape inventory to identify "scenic areas" and establish "visual quality objectives " for the Peace Reach and Carbon Inlet areas.

An understanding of these terms is important to an understanding of this complaint.

A **visual landscape inventory** classifies the provincial land base into **visually sensitive areas** and areas that are not visually sensitive. Visually sensitive areas are areas that could cause concern if forest practices or other resource development activities alter their visual appearance.[1]

The district manager used the visually sensitive areas from the licensee's landscape inventory as the basis to formally identify scenic areas and to establish visual quality objectives. Both of these terms are defined in section 1 of the *Operational Planning Regulation*:

> **scenic area** means any visually sensitive area or scenic landscape identified through a visual landscape inventory or planning process carried out or approved by the district manager
>
> **visual quality objective** means a resource management objective established by the district manager or contained in a higher level plan that reflects the desired level of visual quality based on the physical characteristics and social concern for the area

VQOs range from "preservation" to "excessive modification" and, depending on the objective, create varying degrees of restriction on harvesting operations (see page 3). VQOs apply to scenic areas. As defined above, a scenic area is a landscape that the district manager has identified as sensitive enough to the visible effects of harvesting and road building that it is to be managed to maintain some of its visual attributes.

The district manager established the VQOs and then made them known to the licensee. "Known" is also defined in Section 1 of the *Operational Planning Regulation*:

> **known** means... a feature, objective or other thing that is:
> (a) contained in a higher level plan, or
> (b) otherwise made available by the district manager...at least 4 months before an operational plan is submitted for approval;

Once scenic areas are known, they must be identified in future forest development plans. Visual impact assessments are required to ensure that planned harvesting meets the established VQOs before any logging can be approved in the scenic areas.

[1] This definition was adapted from the *Visual Landscape Inventory Procedures and Standards Manual*, May 1997.

Investigation Findings

Issue #1: Did the district manager comply with the Code when he identified scenic areas and established VQOs?

The Code enables protection of visual quality by providing for the identification of scenic areas and the establishment of visual quality objectives for those areas. The district manager's authority and discretion to identify scenic areas and to establish VQOs is provided in section 1 of the *Operational Planning Regulation.*

Despite the references to these terms in the definitions section of the *Operational Planning Regulation,* there are no other requirements in the Code to constrain or give direction to the district manager or explicitly authorize decisions about identifying scenic areas and establishing VQOs. There is also no Forest Practices Code guidebook regarding the identification of scenic areas and the establishment of VQOs. The *Visual Impact Assessment Guidebook* only describes the operational planning requirements for licensees after VQOs have been established for scenic areas. Facing this situation, and wanting to ensure that plans did provide for the recreational and visual resources in the Dawson Creek district, including Williston Lake, the district manager took the initiative and decided to use the Code's provisions to manage visual quality.

Accordingly, he used the landscape inventory prepared by the licensee and approved by the Ministry of Forests and identified scenic areas based on the visually sensitive areas in the inventory. He then established VQOs for these scenic areas, based on the recommendations in the inventory.

On June 6, 1997, he sent a letter to all licensees identifying the scenic areas and establishing VQOs for the district. This letter made the scenic areas known to all the licensees, bringing these areas into effect for future plans. A copy of the letter was sent to the chair of the Dawson Creek Land and Resource Management Plan (LRMP) committee.

Finding # 1:

The district manager had the authority and discretion under the *Operational Planning Regulation* to identify scenic areas and to establish VQOs. Consistent with the *Operational Planning Regulation* the district manager used visually sensitive areas and VQOs that had been identified in the licensee's visual landscape inventory to identify scenic areas and establish VQOs.

The district manager complied with the *Operational Planning Regulation* when he identified the scenic areas and established the VQOs for Peace Reach and Carbon Inlet.

Issue #2: What information did the district manager consider in identifying scenic areas and establishing VQOs? Did he adequately assess the available information?

The Code definition of visual quality objective sets out two ways in which a visual quality objective can be set—it can be contained in a higher level plan or established by the district manager. In the circumstances of this complaint, there was a higher level planning process, the Dawson Creek LRMP, which had been underway since 1992. However, the plan had not been completed in 1997 and thus there was no higher level plan in place to establish VQOs.

In the absence of direction from a higher level plan, the district manager thought it important to establish visual quality objectives himself and he chose the second route in the interim. He felt that objectives were needed to guide licensees in preparing operational plans that would adequately manage and conserve the visual resources in the Dawson Creek Forest District including areas that were visible from Williston Lake. The district manager also wanted to ensure that licensees would adhere to Code provisions to prepare operational plans that met the established VQOs. He knew that identifying scenic areas, establishing VQOs and making this information known to the licensees in a letter would bring in the Code provisions for visual resources.

Once he decided to establish VQOs for scenic areas, his decision concerned specific sites. Specifically, he decided whether or not a particular area should be a scenic area and, if so, what the VQO should be. In other words, the district manager determined the general social value of the visible landscape. This complaint is about the specific decisions to set specific VQOs for the areas visible from Williston Lake.

The Board examined the relevance and adequacy of the information that the district manager considered when he identified specific scenic areas and established VQOs for those areas. The district manager considered four general sources of information: local concerns, the local LRMP, the licensee's visual landscape inventory, and provincial government objectives.

The definition of VQO in the regulation states that it is based on the physical characteristics and social concern for the area. The physical characteristics of the Williston Lake landscape were combined with estimates of the social concern for the area to produce recommended VQOs in the landscape inventory. The other sources of information that the district manager used (the views of participants in the LRMP process, concerns of local residents and provincial government objectives) were all additional indicators of the social concern for the area.

Local Concerns

Through a long history of consultation by meetings and correspondence, dating back to at least 1992, the district manager became aware of the views of local individuals and groups. In addition, the complainant and others had several meetings with district staff specifically about the VQOs for Williston Lake immediately before the district manager made his decision. The District Council of Hudson's Hope, some residents of Hudson's Hope, members of the Portage Mountain Yacht Club, a local guide-outfitter and the complainant told the district manager that they did not want new harvesting to be evident in areas visible from Williston Lake.

Dawson Creek Land and Resources Management Plan

There was a higher level planning process underway that included the area of Williston Lake. With many other participants, the complainant, the licensee and the Ministry of Forests were involved in the Dawson Creek LRMP which began in 1992. However, the LRMP had not been completed in 1997 and thus there was no higher level plan in place to establish VQOs.

Staff of the Dawson Creek Forest District presented all the scenic areas proposed for the district to the LRMP at a meeting in early May 1997. The LRMP members debated whether or not to identify scenic areas and establish VQOs through the LRMP but could not reach agreement. After the meeting it was apparent to the Chair of the LRMP that:

> ...the majority of the table did not feel the need to prescribe specific visual quality objectives for all scenic areas in the planning area, nor did they feel that the consensus could be reached in trying to do so. In recognition of that fact, and perhaps due to some faith that the visual quality of scenic areas will be maintained through the Ministry of Forests Visual Quality Objective (VQO) establishment process, a strategy was put forth at the last LRMP meeting that allows for public involvement at a more appropriate level of planning. The Ministry of Forests has indicated that public input regarding VQOs will happen at the landscape unit planning level.[2]

The LRMP table could not reach consensus on establishing VQOs. District staff therefore proposed that the district manager would establish VQOs. District staff also indicated that landscape unit planning would follow at some unspecified future time and include public participation. The majority of the table felt comfortable with that approach and the draft LRMP document was amended to contain the following strategy: "Where concerns exist, establish VQO's through landscape level planning processes that include full public participation."

Following the identification of scenic areas and establishment of VQOs on June 6, 1997, the District Council of Hudson's Hope raised concerns with the scenic areas and VQOs that were established. After a meeting on November 18, 1997 to discuss the visual quality objectives for areas around Hudson's Hope, including areas visible from Williston Lake, the District Council sent a map with suggested VQOs to the MOF district manager. In a December 9, 1997 letter responding to these concerns, the district manager made the following commitment: "As directed by the draft LRMP, where concerns exist, VQOs will be established through public participation at landscape level planning."

Ultimately, the LRMP was completed in September 1998 but did not deal with specific scenic areas or VQOs. The LRMP has since been forwarded to government but the objectives have not been established as a higher level plan. Landscape unit planning has not yet started for the areas visible from Williston Lake, but is expected to be completed by the end of 2001.

The LRMP did not identify scenic areas or establish VQOs. Nevertheless, the district presentation to the LRMP table allowed district staff to inform the district manager of concerns

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[2] May 29, 1997 letter from the Chair of the Dawson Creek LRMP to the District Council of Hudson's Hope.

held by the complainant and other LRMP members regarding VQOs. This presentation also allowed district staff to explain the new process whereby the district manager could identify scenic areas and establish VQOs. It was also explained to the members of the LRMP that higher level plans, if specific enough, would supersede any VQOs previously established by a district manager.

Finding #2:

The Dawson Creek LRMP could not reach consensus on establishing VQOs. District staff indicated to the LRMP that public input regarding VQOs would happen at the landscape unit planning level at some unspecified future time. This direction was incorporated in the next draft LRMP report as a strategy that stated: "Where concerns exist, establish VQO's through landscape level planning processes that include full public participation." Following the establishment of VQOs by the district manager, he made a commitment to follow the strategy in the draft LRMP document. However, the landscape unit planning process has not started.

The Licensee's Visual Landscape Inventory

While the Dawson Creek LRMP process was under way, the licensee completed a recreation inventory as part of the management plan for TFL 48. Standards for this inventory were established provincially in the Ministry of Forests *Recreation Manual*. Staff of the Dawson Creek district actively reviewed the inventory both in the office and the field during the three years it took to complete it[3]. The ministry required the licensee to make changes before it was approved by the regional manager in January 1995.

The licensee's approved visual landscape inventory, which included the visually sensitive areas as mapped by the licensee, formed the basis for the district manager's decision about where to designate scenic areas and what VQOs to establish for these areas.

Provincial Government Objectives

The district manager was also aware that government wanted to balance protection of visual resources with provision of adequate timber supplies. In 1996, the Minister of Forests[4] had asked that provincial policy on management of scenic landscapes be made less restrictive on timber harvesting because the Forest Practices Code would reduce detrimental impacts on visual quality and reduce public reaction to its effects on the landscape.

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[3] Inventory problems caused an unusual delay in completing Management Plan #2. TFL licensees were required to update their inventories to Ministry of Forests standards. For TFL 48 the problems included general issues such as obtaining electronic files from Inventory Branch. However, there were also specific concerns with the standards for the recreation inventory that caused delays in its completion.

[4] A letter, dated February 26, 1996, from the Minister of Forests to the chief forester was attached to the chief forester's rationale for the allowable annual cut determination for TFL 48. The purpose of the letter was to explain the objectives of the Crown to the chief forester.

Finding # 3:

The district manager considered concerns of local residents, the views of participants in the LRMP process, a visual landscape inventory prepared by the licensee for TFL 48, and provincial government objectives when he identified scenic areas and established VQOs for the area of the complaint. The district manager adequately assessed the information available from a variety of sources.

Issue #3: Was the district manager's decision on VQOs reasonable?

When a complaint concerns the exercise of discretion by a statutory decision-maker under the Code, the Board generally examines the exercise of that discretion. The Code authorizes decision-makers to make decisions. The Board reviews these decisions to help ensure that resources are managed and conserved in the public's interest under the Code. The standard the Board uses in evaluating discretionary decisions is not whether the decision was the best decision. It is:

> Was the decision consistent with sound forest practices, did it achieve the intent of the Code and was it based on an adequate assessment of available information?

The Board considers additional factors in the context of general public expectations about how decisions are made under the Code. In reporting its conclusions, the Board uses the ordinary meaning of terms like "reasonable", "appropriate" and "adequate".[5]

After considering the various sources of information, the district manager balanced various factors. It was common practice for the licensee to have prepared the visual landscape inventory. That inventory work was approved only after the Ministry of Forests required modifications. The VQOs in the visual landscape inventory were the same VQOs that were established by the district manager.

Much of the forest visible from Williston Lake is part of the forestland in TFL 48 that is available for harvesting, so availability of timber resource was a

Classes of VQOs

Preservation does not allow industrial development activities.
Retention does not allow forest development activities that are visually apparent.
Partial Retention allows visually subordinate alterations to the landscape.
Modification allows alterations that dominate the landscape but must borrow naturally occurring form, line, color and texture and appear as natural disturbances in the background.
Maximum Modification allows dominant alterations out of scale or detail different than the natural landscape.
Excessive Modification occurs where alterations create excessive contrast in form, line, colour and texture, and are visually unrelated to the surrounding landscape.

[5] The policy the Board uses to guide its analysis of such discretionary decisions is available on the Board's website at http://www.fpb.gov.bc.ca/policy/ddfp.htm.

primary consideration. District staff had gone through a process to collect public input through the LRMP and through other meetings with members of the public. There was no requirement for a more formal public process. The district manager was aware of public views, including those of the complainant, but felt he had received "limited rationale" as to why the objectives should be different than those in the visual landscape inventory. Based on the information available, he believed that VQOs of retention or partial retention were more restrictive than required in the area.

In reviewing the district manager's decision, the Board recognized that public perceptions of landscapes vary and that the setting of VQOs is a subjective decision. The Board also noted that the Ministry of Forests *Recreation Manual*, the standard for visual landscape inventory, states that "Maximum modification should not be recommended as a VQO in a visually sensitive area."[6] Therefore, in the visually sensitive areas identified in the visual landscape inventory, neither the maximum modification nor the more intrusive excessive modification would be appropriate. A VQO of modification is the next least constraining VQO on cutblock design.

The Board found that, in areas with a higher likelihood of being harvested in the near future, the most prevalent VQO recommended by the licensee and established by the district manager was modification. There were a few retention and partial retention VQOs established for areas with a high likelihood of being logged. These VQOs were generally established in areas not likely to be logged in the near future. Preservation VQOs were also established for two alpine/sub-alpine areas of high visual sensitivity.

Finding # 4:

The district manager established a range of VQOs on Peace Reach and Carbon Inlet. Overall, the range of VQOs established for these two areas fell within the standards in the ministry's *Recreation Manual.*

The district manager's decision regarding VQOs was reasonable.

Issue #4: Was the process used to gain public input into the identification of scenic areas and establishment of VQOs fair?

The visual landscape inventory and recommended VQOs were a component of a management plan for TFL 48. It is the licensee's legal responsibility to prepare inventories for a TFL, while the Ministry of Forests is responsible for providing and enforcing the standards for inventories on TFLs.

Although the complainant felt it was unfair that the licensee proposed the VQOs, the Board found that the ministry set the standard, reviewed the licensee's work and required changes before it was approved. The ministry's involvement acted to counter the complainant's perception of unfairness.

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[6] Page 6-42 of the *Recreation Manual.*

The management plan, including the visual landscape inventory, was made available for public comment in December 1995 and approved in October 1996. The complainant reviewed that plan during the public comment period. At that time, people reviewing the plan could not have anticipated that the visual landscape inventory would be used to identify scenic areas and establish VQOs under the Code. However, the reviewing public would have known that the information would be used by the licensee and Ministry of Forests to manage the visual resources for areas visible from Williston Lake.

There was also some opportunity for public review of proposed VQOs and scenic areas when they were presented to the Dawson Creek LRMP. The complainant was a participant in the LRMP discussions on VQOs. The discussions with the LRMP table informed the district manager that the complainant, and some others, wanted future logging to have less visible impact on the landscape. In addition, the complainant and others had several meetings with district staff specifically about the VQOs for Williston Lake immediately before the district manager made his decision.

There were expectations created during the LRMP for full public participation in identifying scenic areas and establishing VQOs during landscape level planning at some unspecified time in the future. In the meantime, there was an understanding that the district manager was going to identify scenic areas and establish VQOs. There is no formal process established by the Code for review and comment on scenic areas and VQOs set by the district manager. However, the combination of various forums used by the district manager to solicit public input before making his decision constituted a fair alternative process to what is expected to happen in future landscape level planning.

Finding # 5:

The complainant and other interested members of the public had several opportunities to comment on scenic areas and VQOs. These various forums, in combination, constituted a fair process for public input into the district manager's initiative to manage visual resources that was reflected his decision of June 6, 1997.

Events Subsequent to the Establishment of VQOs

The landscape inventory that the district manager used to establish the VQOs was conducted to the standard required in the Ministry of Forests *Recreation Manual*. The Ministry of Forests had required changes to the landscape inventory before approving it in 1996. Nevertheless, less than two weeks after the district manager formally identified scenic areas in June 1997, ministry staff found that the visual landscape inventory for TFL 48 had not mapped some areas that were visible from Williston Lake. This occurred because proposed protected areas had not been included in the visual landscape inventory and the standards for the visual landscape inventory had changed since it was prepared, reviewed and approved. The district manager expects that future updates to the visual landscape inventory will include these areas.

The licensee has started to update the visual landscape inventory. The majority of the fieldwork has been completed and the results are being mapped. The licensee has also sought input from interested people and organizations through advertising and a referral letter. The complainant

and others responded and the public has also had an opportunity to review and provide comments on the work to update the visual landscape inventory. The district manager has advised the Board that if this new information indicates revisions are required to the scenic areas and VQOs, he can reconsider the scenic areas and VQOs established on June 6, 1997.

In the interim, the district manager has advised the licensee that he expects visual impact assessments for any proposed cutblocks visible from Williston Lake regardless of whether or not they are mapped as scenic areas. For the visible areas not mapped as scenic areas, he expects the visual impact assessment to demonstrate that the proposed harvesting is consistent with the established VQO of the adjacent scenic area.

When the scenic areas were identified and the VQOs were established in June 1997, the *Operational Planning Regulation* required that the results of visual impact assessments were included in forest development plans. Accordingly the results were available for public review in these plans. The licensee was following this requirement.

However in June 1998, this requirement was removed from the *Operational Planning Regulation* and the results of visual impact assessments are no longer a required part of a forest development plan. The current requirement is that if a cutblock is in a known scenic area a visual impact assessment must be completed when a silviculture prescription is prepared. The prescription must demonstrate that the timber harvesting will be consistent with the established VQOs and must contain a statement that it is consistent with the assessment. Upon request, the visual impact assessment must be made available to the district manager.

The district manager may require the person submitting the silviculture prescription to provide an opportunity for the public to review and comment on the prescription. If the district manager requires this opportunity for review and comment, a member of the public reviewing the silviculture prescription may request the visual impact assessment.

The district manager has advised the Board that, since these changes were made to the Code, he has not imposed any requirement to make silviculture prescriptions available for review and comment. He also advised that if concerns were raised during the forest development plan review and comment period, he could require that the silviculture prescription be made available for public review and comment under section 47 of the *Operational Planning Regulation.*

Finding #6:

The visual landscape inventory approved in 1995 for TFL 48 is missing some scenic areas and is currently being updated to the new standard by the licensee. The district manager expects the licensee to treat such areas as scenic areas and, when harvesting, to meet the VQO of the adjacent scenic area. The Code requires visual impact assessments for cutblocks in scenic areas before logging is approved. Therefore, the district manager expects a visual impact assessment for all cutblocks visible from Williston Lake and he also expects the silviculture prescriptions for such cutblocks to demonstrate that the proposed harvesting is consistent with the VQO.

The Code does not require that the public be given an opportunity to review and comment on silviculture prescriptions and visual impact assessments. However, the district manager does have the authority, under section 47 of the *Operational Planning Regulation*, to require that they be made available for review and comment.

Conclusions

1. The district manager had the authority to identify scenic areas and establish VQOs for the scenic areas along the Carbon Inlet and the Peace Reach on Williston Lake. In the circumstances, the district manager took the initiative to identify scenic areas and establish VQOs. He complied with the Code when he did so.

2. The district manager considered information from a variety of sources, including the public, before identifying scenic areas and establishing VQOs. There is no Code requirement for a formal public process to solicit information or involvement. The district manager adequately assessed the information available from a variety of diverse sources.

3. The landscape inventory that the district manager used to establish scenic areas and VQOs was prepared by the licensee. However the inventory was based on standards established by the Ministry of Forests and district staff reviewed the inventory and required changes before it was approved. The district manager's decision to use the inventory was consistent with normal practice in the province and reasonable in the circumstances.

4. The district manager knew that the complainant and others wanted VQOs that would be more restrictive on logging activities. He decided that the VQOs they were requesting were based on limited rationale and were more restrictive than necessary. His decision to established a range of VQOs for Peace Reach and Carbon Inlet was reasonable in the circumstances.

5. There was an adequate opportunity for the complainant and other interested people to review and comment on the scenic areas and VQOs before they were established. The various forums used to solicit public input constituted a fair process for public input.

6. Following the district manager's June 6, 1997, decision to established the VQOs, he also made a commitment that the public would be involved in the future in the establishment of VQOs in a landscape planning process.

7. The visual landscape inventory for TFL 48 and the scenic areas established by the district manager do not include all areas visible from Williston Lake. The district manager has addressed this deficiency by treating such areas as scenic areas with established VQOs. The district manager expects that the visual impact assessments for these areas will be done before logging is approved.

8. The Code does not presently require that the public be given an opportunity to review and comment on visual impact assessments or silviculture prescriptions.

Recommendations

The Board recognizes that there is public interest in, and concern about, the management of visual landscapes along Peace Reach and Carbon Inlet on Williston Lake. The Board also recognizes that the district manager has publicly stated his intention to identify scenic areas and re-establish visual quality objectives after completing a landscape unit plan with full public participation.

In accordance with section 185 of the Act, the Board recommends that:

1. The district manager initiate the process to solicit public participation in the identification of scenic areas and visual quality objectives so that these objectives for areas visible from Williston Lake can be included in a landscape unit plan to be completed by December

2. In the interim, the district manager ensure that any interested groups or individuals who request an opportunity to review visual impact assessments and comment on silviculture prescriptions are provided with that opportunity before proposed cutblocks visible from Williston Lake are approved for harvesting.

In accordance with Section 186 of the Act, the Board requests that the district manager of the Dawson Creek Forest District advise the Board by June 30, 2000, of the actions taken or planned to address these recommendations.

The panel of the Board that concluded this report was Keith Moore, Liz Osborn and Klaus Offermann.

Peace Reach and Carbon Inlet